

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EFRAIM NISSIM,

Petitioner,

v.

WARDEN RON CHARLES, et al.,

Respondent.

Civil Action No. 23-22992 (MCA)

MEMORANDUM & ORDER

Pro se Petitioner Efraim Nissim, a pretrial detainee at Essex County Jail, seeks to bring a habeas petition pursuant to 28 U.S.C. § 2241. (ECF No. 1.) At this time, the Court grants Petitioner's IFP application. (ECF No. 1-2.) Federal district courts are required under Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts, which is applicable to § 2241 petitions pursuant to Rule 1(b), to screen and summarily dismiss a habeas petition prior to the answer when the petition "appears legally insufficient on its face." *McFarland v. Scott*, 512 U.S. 849, 856 (1994); *see also United States v. Thomas*, 221 F.3d 430, 437 (3d Cir. 2000) (explaining habeas petitions may be dismissed where "none of the grounds alleged in the petition would entitle [the petitioner] to relief"). For the reasons explained herein, the Court declines to exercise pretrial habeas jurisdiction and dismisses the Petition without prejudice.

Petitioner is a state pretrial detainee who is incarcerated on undisclosed charges. Petitioner alleges that his detention for more than eight months violates his speedy trial rights, that a final restraining order may not be issued against a California resident, and that the delay in his arrest and indictment has led to the loss of evidence, which violates his due process rights. (ECF No. 1 at 7-8.) It appears that Petitioner appealed the denial of bail to the New Jersey

Appellate Division (ECF No. 1 at 3), but he has not exhausted the claims he seeks to bring in his Petition. Petitioner seeks immediate release and dismissal of the charges against him. (*Id.* at 8.)

Section 2241 authorizes a federal court to issue a writ of habeas corpus to a pre-trial detainee who “is in custody in violation of the Constitution or laws or treaties of the United States.” *Moore v. De Young*, 515 F.2d 437, 442 n.5 (3d Cir. 1975) (quoting 28 U.S.C. § 2241). “Nevertheless, that jurisdiction must be exercised sparingly in order to prevent in the ordinary circumstance ‘pre-trial habeas interference by federal courts in the normal functioning of state criminal processes.’” *Duran v. Thomas*, 393 F. App’x 3, 4 (3d Cir. 2010) (per curiam) (quoting *Moore*, 515 F.2d at 445–46). In considering whether a federal court should ever grant a writ of habeas corpus to a state pre-trial detainee, the Third Circuit has held

- (1) federal courts have “pre-trial” habeas corpus jurisdiction;
- (2) that jurisdiction without exhaustion should not be exercised at the pre-trial stage unless extraordinary circumstances are present;
- (3) where there are no extraordinary circumstances and where petitioner seeks to litigate the merits of a constitutional defense to a state criminal charge, the district court should exercise its “pre-trial” habeas jurisdiction only if petitioner makes a special showing of the need for such adjudication and has exhausted state remedies.

Moore, 515 F.2d at 443 (emphasis added).

Here, it appears that Petitioner has not exhausted his state court remedies for any of the claim in his pretrial habeas. “[T]he practice of exercising [federal habeas] power before the question has been raised or determined in the state court is one which ought not to be encouraged.” *Id.* 515 F.2d at 442 (quoting *Cook v. Hart*, 146 U.S. 183, 195 (1892)). “The state courts are equally responsible for ‘protecting the accused in the enjoyment of his [federal] constitutional rights,’ and ‘comity demands that the state courts, under whose process he is held ... should be appealed to in the first instance.’” *Williams v. New Jersey*, No. 16-3195, 2017 WL 680296, at *2 (D.N.J. Feb. 21, 2017) (quoting *Moore*, 515 F.2d at 442-43 (alteration and

omission in original)). Because Petitioner has not exhausted his claims in state court and has not alleged any extraordinary circumstances, the Court will not exercise its pre-trial habeas jurisdiction.¹ For these reasons, the Court declines to exercise pretrial habeas jurisdiction and dismisses the Petition without prejudice.

THEREFORE, it is on this 5 day of June 2025,

ORDERED that Petitioner's IFP application (ECF No. 1-2) is GRANTED; and it is further

ORDERED that the Court declines to exercise pretrial habeas jurisdiction and the Petition is dismissed WITHOUT PREJUDICE under Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts, which is applicable to § 2241 petitions pursuant to Rule 1(b); and it is further

ORDERED that the Clerk of the Court shall send a copy of this Memorandum & Order to Petitioner by regular U.S. mail and CLOSE this case accordingly.



Madeline Cox Arleo
United States District Judge

¹ Petitioner alleges in passing in the relief section that he is not receiving "proper medical treatment" in jail and has been shackled to other inmates at court appearances. (ECF No. 1 at 8.) These allegations do not amount to extraordinary circumstances. And although the Court does not construe Plaintiff to seek relief pursuant to 42 U.S.C. § 1983, nothing in this Memorandum and Order prevents Petitioner from filing a new civil rights action regarding any allegedly unconstitutional conditions of confinement, along with the proper filing fee or an application to proceed *in forma pauperis*.